

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1697 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHHATRAPALBHAI G PATEL

Versus

CHIKLI TALUKA KAMDAR PARASPAR SAHAKARI MANDLI LTD

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Appearance:

MR PR JOSHI for Petitioner

MR DM THAKKAR for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/10/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The respondent filed a Lavad case no.47 of 1979 against the petitioner for recovery of sum of Rs.28993-78 under sec. 102 of the Gujarat Cooperative Societies Act, 1961 before the Board of Nominees at Valsad. The Board of Nominees has passed the award against the petitioner, and against the said award, the petitioner filed Appeal No.29 of 1984

before the Gujarat State Cooperative Tribunal at Ahmedabad. This appeal has been dismissed for non-prosecution.

2. The counsel for the respondent stated that from time to time the hearing of the appeal has been deferred on the request of the petitioner. On the last date, the adjournment has been granted to the petitioner subject to the payment of costs of Rs.50/- and the appeal was fixed for hearing on 4th September, 1985. On 4th September, 1985, none put appearance on behalf of the petitioner, and as such, the Tribunal passed the order for the dismissal of the said appeal, but that order was not signed and the matter was placed on 11th September, 1985. On 11th September, 1985 the order was signed. The application for restoration of the appeal has been filed on 13th October, 1985.

3. The counsel for the petitioner does not dispute the fact that on 4-9-1985 though the order has been passed for dismissal of the appeal for default, but the order was not signed. The explanation has been given for the absence of the counsel on 4-9-1985 that he had gone to attend the funeral ceremony of his relative. Even if it is taken to be correct, then also there is no material evidence in support thereof on record. In support of this plea no material has been given whatsoever. The counsel for the petitioner has not taken any step whatsoever including the step of ascertaining that what order has been passed on 4th September, 1985 till 13th October, 1985. The court has granted the indulgence in this case to the petitioner, for which otherwise he was not entitled, by not signing the order on 4th September, 1985. The order has not been signed for the reason that in the meanwhile, if the counsel for the petitioner appears, then he shall be heard on merits. In view of this facts, the Tribunal has not committed any error whatsoever in rejecting the application of the petitioner filed for restoration of the appeal which has been dismissed for non-prosecution.

4. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

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